IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION Nos.16389 and 16390 of 2003

W.P.No.16389 of 2003

Between:

1 B.Sudhakar s/o Late Durgappa
R/o 4-2-533., Yuvajana Colony., Somanathnagar.,
Ananthapur District.
2 B.Surendra Kumar s/o B.Sudhakar
R/o 4-2-533., Yuvajana Colony., Somanathnagar., Ananthapur.

..... PETITIONERS.

AND

1 The Chairman & Managing Director., C.P.D.C.L., Singareni Bhavan.,
Near Hotel Ayodhya., Lakdikapool., Hyderabad.
2 The Superintending Engineer., (Operation)., Ananthapur.
3 The Divisional Electrical Engineer., Operation Division., Ananthapur.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ, Order or direction more particularly one in the nature of Writ of Mandamus:- i) to declare the Memo No.DEE/O/ATP/Adm/C2/D.No.380/2003 of the 3rd respondent dated 31-5-2003 as illegal and arbitrary and set aside the same. ii)to direct the respondents to appoint the 2nd petitioner herein on compassionate grounds in view of the retirement of the Ist petitioner herein on medical invalidation. iii) to call for records; in the interest of justice and equity.

Counsel for the Petitioner:MS.R.ANNAPURNA

Counsel for the Respondents: Mr. SAMINENI KISHORE, Standing Counsel for respondents.

WRIT PETITION NO.16390 of 2003

Between:

1 N.Linganna s/o Late Basappa
R/o D.No.23/437-B., Guntakal., Ananthapur District.
2 Miss.N.Krishna Veni d/o Linganna
R/o 23/437-B., Guntakal., Ananthapur District.

..... PETITIONERS.

AND

1 The Chairman and Managing Director C.P.D.C.L.,Singareni Bhavan.,
Near Hotel Ayodhya., Lakdikapool., Hyderabad.
2 The Superintending Engineer, APCPDCL (Operation)., Ananthapur.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ, order or direction more particularly one in the nature of Writ of Mandamus:- i) to declare the Memo No.DS(per)AS(Estt)/P-F/F.No.375/2003 of the Ist respondent dated 20-2-2003 as illegal and arbitrary and set aside the same. ii) to direct the respondents to appoint the 2nd petitioner herein on compassionate grounds in view of the retirement of the Ist petitioner herein on medical invalidation. iii) to call for records; in the interest of justice and equity

Counsel for the Petitioner: R.Annapurna

Counsel for the Respondents: Mr. SAMINENI KISHORE, Standing Counsel for respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION Nos.16389 AND 16390 OF 2003

COMMON ORDER:

Heard Smt. R.Annapurna, the learned counsel appearing for the petitioners and Sri Samineni Kishore, the learned standing counsel appearing on behalf of the respondents.

Since common question is involved in these two cases, they are being taken up together for disposal.

The case of the petitioners is that the petitioner No.1 in both the writ petitions have been working as employees with the respondents and both of them had to seek retirement on medical grounds and consequently they sought for appointment of

their respective son and daughter on compassionate grounds. However, the same was rejected mainly on the ground that as on the date of retirement which was given effect, either of the petitioner No.1 in both these cases did not have minimum five years period of service by the date of reaching their superannuation. Hence, the writ petitions.

Factually speaking, the petitioner No.1 in W.P.No.16389 of 2003 was working as an Assistant Lineman and his date of birth is 01.07.1947 whereas he joined service on 26.04.1973. However, due to sufferance from chronic lung disease, the local family Doctor advised him to retire from service to avoid further deterioration, and accordingly, he made an application on 28.03.2002 and 29.04.2002 to retire him on medical grounds with effect from 30.06.2002 and also requested that the petitioner No.2 who is his son to be appointed on compassionate grounds. The petitioners state that as on the date of application, the petitioner No.1 had still service of five years four months and two days that is more than the required period, since his date of superannuation falls on 30.06.2007. However, due to the delayed proceedings initiated by the respondents, his application was sent on 09.04.2002 to the Deputy Secretary, (HRD) who in turn forwarded the same to the Superintendent, Osmania General Hospital, on 01.07.2002 for examination. Even there, there has been a delayed action and it was only on 15.07.2002 he received a letter dated 10.07.2002 for appearing before the Medical Board on the very same date of receipt. Therefore, he could not appear as he had to travel all the way from Ananthapur to Hyderabad. Another intimation was given on 18.07.2002 for his appearance on 30.07.2002, on which date, the petitioner No.1 was examined and ultimately medical invalidation certificate was issued to him on 31.07.2002 confirming his illness. Thereupon, the petitioner No.1 was relieved once again with a delayed action on the part of the respondents, with effect from 31.10.2002. However, ultimately under the impugned orders dated 13.05.2003 that too after a long lapse of period, the respondents rejected the petitioner No.1's request for compassionate appointment of his son Petitioner No.2, on the ground that as on the date of relieving the first petitioner, he had less than 5 years of service and therefore, the first petitioner is not entitled for compassionate appointment of his son. Hence, the writ petition.

In the other writ petition in W.P.16390 of 2003, the petitioner No.1 was working as Assistant Lineman and the 2nd petitioner is his daughter. The date of birth of the petitioner No.1 being 26.06.1949, he joined the services with the respondents on 26.07.1977 as Helper and later on he was promoted as Assistant Lineman on 06.07.1992. However, due to sufferance from several Coronary Artery Disease, left Ventriwler Dystrimination, Diabetes Mellitus with recurring attacks of unstable Angina. The family Doctor advised the petitioner No.1 to retire from service to avoid further deterioration. Therefore, he made an application on 15.04.2002 to retire him on medical invalidation with effect from 31.05.2002, which was received on 16.04.2002 by the respondents. In the said application, the petitioner No.1 had made a request for appointing petitioner No.2 on compassionate grounds. The petitioners state that as on the date of application, the first petitioner had service of five years and two months before reaching the date of superannuation, which is due on 30.06.2007. The said application was sent to the first respondent on 18.04.2002 for appropriate action and thereupon the Superintendent of the Osmania General Hospital was requested to examine first petitioner as per the proceedings dated 01.07.2002. Even though, the application was filed long back i.e., on 16.04.2002, the petitioner No.1 had received like the other cases the intimation from the Hospital on 15.07.2002 vide letter dated 09.07.2002 asking him to appear before the Medical Board on the same date of receipt. He could not attend before the Medical Board as he had to travel all the way from Ananthapur to Hyderabad. Another intimation dated 26.07.2002 was given to him to appear on 30.07.2002. On 31.07.2002 medical invalidation certificate was issued by the Board confirming illness of the first petitioner, but the same was communicated to the respondents on 27.09.2002. Thereupon, the first petitioner was relieved from service on medical invalidation grounds with effect from 30.09.2002. However, the request for compassionate appointment was rejected by the respondents under the impugned proceedings dated 20.02.2003 on the ground of the petitioner had less than five years of service left.

Smt. R.Annapurna, the learned counsel appearing for the petitioners submits that as per the B.P.Ms.No. 247, dated 17.03.1989, the contemplation is only in regard to having 5 years of service for the dependents for giving compassionate appointment. The respective petitioner No1 in both the cases were suffering from illness, which occurred long before the said period of five years and further immediately the

petitioners have applied for retirement with request on compassionate grounds. Even though in both these cases, the applications were filed on 28.03.2002 and another on 15.04.2002, the same were not processed immediately and there had been a delay consistently at every stage for which the petitioners cannot be made responsible and ultimately the illness shown by the petitioners has been duly confirmed by the Medical Board of the Osmania General Hospital. There is no reason to deny the benefits to which they are entitled under the law. Even after receipt of the certificate from the Hospital, there has been again delay and all such delays are not attributable to the respective petitioners.

The learned standing counsel appearing on behalf of the respondents Sri Samineni Kishore sought to defend the impugned orders on the ground that the scheme as initiated under the aforesaid B.P.Ms. contemplates five years of service to be left as on the date of relieving and not otherwise. Therefore, necessarily irrespective of the fact that whether the application is made earlier or not, since the date of relieving the period has to be reckoned.

Considering the submissions as put forward from both the sides, the main aspect requires to be considered is as to whether on the facts and circumstances, the petitioners are entitled to seek the compassionate appointment in terms of the B.P.Ms. No.247, dated 17.03.1989.

There is no serious dispute in regard to the chronological events as pointed out in both the cases. The petitioner No.1 in both the cases have been in service quite for a long time without any complaints what-so-ever. Further, there is also no serious dispute in regard to the sufferance from which both the petitioners have been put to and both the illnesses are quite serious of its nature whereby either of the petitioners could not possibly discharge their duties while attending thereto. It is only on the advice of their respective family Doctors, the petitioners decided to retire themselves from service on medical invalidation grounds. Accordingly, both of them filed applications on 28.03.2002 and on 15.04.2002 respectively and there is no dispute in this regard also. However, surprisingly there is no explanation forthcoming as to why the delay has occurred from the date of filing of the applications till the same were forwarded to the first respondent and later to the Osmania General Hospital.

Further even in the Hospital, there has been a delay in regard to their examination and even after examination; the certificates were sent at a slow pace. Once again after receipt of the certificates, there is slackness on the part of the respondents in trying to relieve both the petitioners. However, at all stages especially from the date of filing of the original applications, any delay, latches or time taken for such processing cannot be attributed to or put against, the petitioners in any circumstances. There is no explanation forthcoming on the part of any of the respondents herein or from the Hospital staff as to any acceptable and valid reasons. No-doubt, the aforesaid B.P.Ms. No.247, dated 17.03.1989 contemplates the existence of balance of service of five years. Earlier, it was prescribed as 10 years but under the aforesaid B.P.Ms. No.247, the same is reduced to five years so as to enable the employment of the dependents of employees retiring on medical invalidation. However, there is no specific direction or any contemplation in the aforesaid claims as to from which date the actual period has to be reckoned. Necessarily, having relied on the entire contents thereof, when an employee seeks retirement on medical invalidation, the requirement is that he or she must possess minimum five years period of service before attaining the age of superannuation prescribed for the posts. Therefore, the respondents sit over the matter and conveniently pass orders at leisure and contend that it is that date, which has to be reckoned, does not find any valid reason to support. Further, having regard to the nature of the claim as initiated which is beneficial one in favour of the employees and more so when no such prescriptions or conditions much less any term having been prescribed, the same cannot be imported under such scheme. On behalf of the respondents, no other material has been produced or pressed into service, to show that such minimum period of service has to be reckoned from the date of relieving but not from the date on which the employee seeks retirement on medical invalidation. In the circumstances, it has to be held that the said scheme should be read to the effect that the existence of minimum period of five years should only be reckoned from the date of application of the employee concerned and not otherwise and more so not from the date on which ultimately the same is accepted and the employee is relieved.

The writ petitions are, accordingly, allowed. The respondents are directed to consider the cases of the second petitioner in both the cases for appointment on

compassionate grounds with the retirement of the respective first petitioners on medical invalidation. The entire exercise shall be completed within a period of two months from the date of receipt of the order. No costs.

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B. PRAKASH RAO, J

25.02.2005.

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on

Friday the twenty fifth day of February two thousand and five.

Asst. Registrar

Copy To

1 The Chairman & Managing Director., C.P.D.C.L., Singareni Bhavan., Near Hotel Ayodhya., Lakdikapool., Hyderabad.
2 The Superintending Engineer, (Operation) APCPDCL, Ananthapur.
3 The Divisional Electrical Engineer., Operation Division., Ananthapur.

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